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Filing date: **04/17/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214512
Party	Plaintiff Two Brothers Brewing Company
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Submission	Motion to Suspend for Civil Action
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Signature	/Thomas L. Holt/
Date	04/17/2014
Attachments	Consented Motion to Suspend For Civil Action - Final.pdf(13489 bytes) Ex. A - Complaint.pdf(2126867 bytes) Ex. B - Answer.pdf(629531 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TWO BROTHERS BREWING COMPANY,)	
)	
Opposer,)	Opposition No. 91/214,512
)	
v.)	Serial No. 86/021,014
)	Serial No. 86/020,720
)	
THREE BROTHERS BREWING, LLC)	Mark: 3 BROTHERS
)	
)	Filing Date: July 26, 2013
Applicant.)	
)	

CONSENTED MOTION TO SUSPEND FOR CIVIL ACTION

Opposer Two Brothers Brewing Company (“Opposer”), by its undersigned counsel, hereby moves pursuant to Trademark Rule 2.117(a) (37 C.F.R. 2.117(a)) and Trademark Board Manual of Procedure (“TBMP”) § 510.02(a), that the Board suspend proceedings in the above-captioned opposition (Opposition No. 91/214,512) (the “Opposition Proceeding”), pending the disposition of the civil action in the Eastern District of Virginia between the same parties, *Two Brothers Brewing Company v. Three Brothers Brewing, LLC*, Case No. 1:14-cv-48-LOG/TCB, which raises issues of fact and law that will have a bearing on the issues presented in the Opposition Proceeding.

The Board may suspend proceedings when the parties are engaged in a civil action that may have a bearing on the case. 37 C.F.R. § 2.117; TBMP § 510.02(a). Here, the parties to the Opposition Proceeding are the same parties to the civil action, and the marks involved in both proceedings overlap. Moreover, Opposer has requested that the district court order Applicant to expressly abandon its two applications to register the 3 BROTHERS marks that are the subject of

this Opposition Proceeding. Applicant, in its answer and counterclaim, has asked that the district court dismiss the action, enter judgment in its favor and declare that Opposer's federal trademark Registration No. 2,319,407 be deemed abandoned and canceled.

As grounds for this motion, Opposer states as follows:

1. On July 26, 2013, Three Brothers Brewing, LLC ("Three Brothers") filed U.S. Federal Trademark Application Serial Nos. 86/021,014 and 86/020,720 for the mark 3 BROTHERS covering "beer, ale, lager, stout, porter and shandy" and "button down shirts, hats, and T-shirts," respectively (the "Three Brothers' Applications").
2. On January 16, 2014, Opposer filed an opposition to Three Brothers' Applications based on the likelihood of confusion between Three Brothers' marks and Two Brothers' federally registered and common law trademark rights.
3. On January 17, 2014, Opposer filed a complaint for federal trademark infringement against Three Brothers in violation of Section 32(a)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a); for federal and common law unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and common law; and for violation of the Virginia Consumer Protection Act, in the Eastern District of Virginia styled, *Two Brothers Brewing Company v. Three Brothers Brewing, LLC*, Case No. 1:14-cv-48-LOG/TCB. The claims in this complaint include the same marks at issue in this Opposition Proceeding. Attached as Exhibit A is a copy of the complaint (without exhibits) from the civil action in accordance with TBMP § 510.02(a).
4. On February 21, 2014, Opposer served the district court complaint on Three Brothers.
5. On March 17, 2014, Three Brothers filed an answer and counterclaim denying the claims in Opposer's complaint and seeking declaratory relief that registration and use of the

marks which are the subject of Three Brothers' Application will not infringe on any rights of Opposer and that Opposer's federal trademark Registration No. 2,319,407 be deemed abandoned and canceled. Attached as Exhibit B is a copy of the Answer, Affirmative Defenses and Counterclaim to Plaintiff's Complaint.

6. Opposer submits that the determination of the civil action will have a bearing on the issues before the Board in this Opposition Proceeding because both proceedings involve a determination of the likelihood of confusion between Two Brothers' and Three Brothers' marks.

WHEREFORE, for all the foregoing reasons, Opposer respectfully submits that there is good cause for suspension and requests that the Board grant its consented motion and suspend the Opposition Proceeding pending the disposition of the court action pending in the Eastern District of Virginia.

On April 16, 2014 Daniel Fitch, counsel for Applicant, consented to this motion.

Respectfully submitted,

TWO BROTHERS BREWING COMPANY

Dated: April 17, 2014

By: /s/ Thomas L. Holt
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2014 I served a true and correct copy of the foregoing
CONSENTED MOTION TO SUSPEND on counsel for Applicant by email at
DFITCH@wawlaw.com.

/s/ Thomas L. Holt
One of the Attorneys for Opposer
Two Brothers Brewing Company



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

TWO BROTHERS BREWING COMPANY,

Plaintiff,

-vs.-

THREE BROTHERS BREWING, LLC

Defendant.

Civil Action No. 1:14cv48

JURY TRIAL DEMANDED LOG/tcb

COMPLAINT

For its complaint against Defendant Three Brothers Brewing, LLC ("Three Brothers"), Plaintiff Two Brothers Brewing Company ("Two Brothers") alleges as follows:

NATURE OF THE ACTION

1. This is an action for federal trademark infringement for the unauthorized use of the Two Brothers' federally registered and common law trademarks in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a); for federal and common law unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and common law; and for violation of the Virginia Consumer Protection Act.

THE PARTIES

2. Plaintiff Two Brothers is an Illinois corporation with a place of business at 30w315 Calumet Ave., Warrenville, IL 60555.

3. On information and belief, Three Brothers is a Virginia limited liability company with a place of business at 800 North Main Street, Harrisonburg, VA 22801. During all time

relevant to this Complaint, Three Brothers has been transacting business in the Commonwealth of Virginia and infringing Two Brothers' trademarks as set forth herein.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Two Brothers' federal claims pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a). This Court has jurisdiction over Two Brothers' related common law and state law claims under 28 U.S.C. § 1338(b) and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

5. Three Brothers is subject to personal jurisdiction in this judicial district. Upon information and belief, Three Brothers has systematic and continuous contacts in this judicial district, regularly transact business within this district, and regularly avails itself to this district. On information and belief, Three Brothers has committed tortious acts aimed at, and causing harm within this district. The consequences of Three Brothers' actions produce effects in and directly implicate this district.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district.

FACTS

Two Brothers' Trademark

7. Two Brothers is a 100% family-owned microbrewery founded by brothers Jim and Jason Ebel in late 1996.

8. Two Brothers has worked from the ground up to establish a widespread reputation of high quality beer sold under the TWO BROTHERS mark.

9. Lacking funding to install a bottling line, Two Brothers began as a draft-only brewery. Two Brothers sold its first keg in March of 1997.

10. In 1998, Two Brothers installed its first bottling line, which had a capacity of about 16 bottles per minute. Due to increased sales and demand, Two Brothers later replaced its bottling line with a state-of-the-art machine that had the capacity of 150 bottles per minute. In November of 2007, Two Brothers moved into a new 40,000 square foot facility. At that time, it installed a new 50 barrel brewing system and added 3,000 barrels of fermentation space. By April of 2008, they had already reached full capacity in the new brewery and went through yet another expansion. These expansions are ongoing, with Two Brothers adding fermentation capacity every year. In 2013, another major expansion included installing a bottle filler, which has a capacity of 300 bottles per minute.

11. Through this tremendous growth and expansion over the years, Two Brothers has developed wide-spread recognition and a national reputation for its high quality beer products. See Exhibit A.

12. Two Brothers promotes its products on its website which is accessible at www.twobrosbrew.com and www.twobrothersbrewing.com.


13. Since August 9, 1997, Two Brothers has used in commerce the trademark TWO BROTHERS to identify its company and beer products. Two Brothers has invested significant resources in developing, advertising, promoting, and marketing this beer under the TWO BROTHERS mark and in establishing TWO BROTHERS products in the minds of consumers with high quality beer offered by Two Brothers Brewing Company. The Two Brothers mark appears on bottles, packaging, and various marketing materials. Examples of such are attached as Exhibit B.


14. Two Brothers beer products are regularly featured at beer festivals, which are attended by consumers from across the country. See Exhibit C. One prominent example of this is

Two Brothers' participation in the Great American Beer Festival held in Denver, Colorado each year. In 2013, this festival judged 4,809 product entries from 49 states plus the District of Columbia and had 49,000 attendees from 11 countries. Two Brothers is also featured on the websites BeerAdvocate.com, BeerPulse.com, and RateBeer.com. Further, Two Brothers has been featured in national magazines such as Time, Men's Health, Men's Journal, Rachel Ray Magazine, Costco Connection, Playboy and many others. Finally, Two Brothers' products have appeared on national television shows, including Bar Rescue, Chicago Fire, and Fox News.

15. The TWO BROTHERS mark is inherently distinctive. By reason of extensive use and promotion, Two Brothers' TWO BROTHERS mark has become favorably known among consumers as used in connection with Two Brothers' beer products and has become a valuable asset as a symbol of Two Brothers, its quality products and its goodwill.

16. Two Brothers has taken steps to protect the TWO BROTHERS mark in connection with its products, including the following federal registration and applications:

Trademark	Registration No.	Registration Date	Goods
	2,319,407	February 15, 2000 (First use: April 10, 1997; First use in commerce: Aug. 9, 1997)	Beer

Trademark	Appln. Ser. No.	Filing Date	Goods
	86123386	November 19, 2013 (First use: March 8, 2010; First use in commerce: June 15, 2010)	Beer
Two Brothers Brewing Company	86123339	November 19, 2013 (First use: Oct. 28, 1996; First use in commerce: Aug. 8, 1997)	Beer

The above registration is valid, subsisting, and in full force and effect. A copy of the registration certificate for the mark is attached as Exhibit D. Copies of printouts from the USPTO website listing details of the Two Brothers' pending applications are attached as Exhibits E and F.

17. Pursuant to Section 7(b) of the Lanham Act, 15 U.S.C. § 1057(b), Two Brothers' federal registration certificate is prima facie evidence of the validity of the TWO BROTHERS mark as well as Two Brothers' ownership and exclusive right to use the TWO BROTHERS mark in commerce.

18. Two Brothers' federal registration, pending applications, and common law rights to the TWO BROTHERS marks will be collectively referred to as the "TWO BROTHERS mark."

Three Brothers' Infringing Acts

19. Upon information and belief, long after Two Brothers first used the TWO BROTHERS mark and notwithstanding Two Brothers' rights in that mark, Three Brothers

adopted and began using the confusingly similar 3 BROTHERS , THREE BROTHERS BREWING, and JOIN THE BROTHERHOOD marks (collectively, the “THREE BROTHERS mark”) in connection with its beer products.

20. On information and belief, Three Brothers began distributing beer under the THREE BROTHERS mark in December 2012.

21. On information and belief, in April 2013 Three Brothers began offering beers on tap in its onsite tasting room. *See* Exhibit G.

22. On July 26, 2013 Three Brothers filed with the United States Patent and Trademark Office U.S. Federal Trademark Application Ser. No. 86/021,014 for the mark “3 BROTHERS” for beer, ale, lager, stout, porter and shandy. The application lists December 21, 2012 as the date of first use in commerce. *See* Exhibit H.

23. On July 26, 2013 Three Brothers filed with the United States Patent and Trademark Office U.S. Federal Trademark Application Ser. No. 86/020,720 for the mark “3 BROTHERS” for button down shirts, hats, and T-shirts. The application lists March 7, 2012 as the date of first use in commerce. *See* Exhibit I.

24. On information and belief, Three Brothers sells beer under the THREE BROTHERS mark throughout Virginia. The greatest concentration of its sales is around Harrisonburg and in northern Virginia. Three Brothers claims that they can “get a product that needs to be drunk as quickly as possible to the retailers within a day or two for anywhere in VA.” *See* Exhibit G.

25. On information and belief, Three Brothers promotes its beer products through its website www.threebrosbeer.com. The domain name threebrosbrew.com, uses the identical format and to Two Brothers domain twobrosbrew.com.

26. Two Brothers and Three Brothers products have already competed in the market. For example, both companies attended the Great American Beer Festival in Denver, Colorado in 2013.

27. Upon information and belief, the beer products offered by Three Brothers under the THREE BROHTERS mark are related in nature and kind to the beer products Two Brothers sells under the TWO BROTHERS mark.

28. Upon information and belief, both Two Brothers and Three Brothers promote and sell their respective beer products to bars, restaurants, distributors, and retailers.

29. Pursuant to 15 U.S.C. § 1072, before Three Brothers began using and applied for registration of the THREE BROTHERS mark, Three Brothers had constructive notice of Two Brothers' claim of ownership of the TWO BROTHERS mark for beer products.

30. Upon information and belief, Three Brothers has used the THREE BROTHERS mark with actual knowledge of Two Brothers' distinctive TWO BROTHERS mark, and with an intent to capitalize on the reputation and goodwill of Two Brothers, to confuse and deceive consumers, and to unfairly compete with Two Brothers.

31. Three Brothers use of the THREE BROTHERS mark in connection with beer products in interstate commerce is likely to cause confusion, mistake, and deception among the relevant consuming public. Consumers will likely believe that Three Brothers' goods are in some way associated with or connected with or approved or authorized by Two Brothers, or that Three Brothers' goods originate from the same source as do Two Brothers' goods, when that is not the case.

32. Two Brothers has been damaged as a consequence of Three Brothers' unauthorized use of the THREE BROTHERS mark.

33. In addition, Three Brothers' conduct will cause Two Brothers immediate and irreparable injury, loss and damage for which Two Brothers will have no adequate remedy at law.

COUNT I

(Federal Trademark Infringement)

34. As the first ground for relief, Two Brothers hereby alleges trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). Two Brothers incorporates by reference Paragraphs 1 through 33 above, as though fully set forth herein.

35. Three Brothers' unauthorized use in interstate commerce of the THREE BROTHERS mark is likely to cause confusion or mistake as to the source, sponsorship, approval, or affiliation of Three Brothers' products. The consuming public and the trade are likely to believe that Three Brothers' products originate with Two Brothers, are licensed, sponsored or approved by Two Brothers, or are in some way connected with or related to Two Brothers, in violation of 15 U.S.C. § 1114(1).

36. Three Brothers' unauthorized and infringing acts, as alleged herein, constitute intentional and willful infringement of Two Brothers' rights.

37. Three Brothers' acts have caused and, unless restrained by this Court, will continue to cause serious and irreparable injury to Two Brothers, for which it has no adequate remedy at law.

COUNT II

(Federal Unfair Competition)

38. As its second ground for relief, Two Brothers hereby alleges federal unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Two Brothers incorporates by reference Paragraphs 1 through 37 above, as though fully set forth herein.

39. Three Brothers' use of the THREE BROTHERS mark in connection with beer and related products constitutes use of a false designation of origin in interstate commerce, in violation of Two Brothers' rights in its distinctive TWO BROTHERS mark. Three Brothers' use of the THREE BROTHERS mark wrongfully and falsely designates, describes or represents Three Brothers' products, causing confusion, mistake and deception as to the affiliation, connection, or association of Three Brothers' products with Two Brothers, or as to the sponsorship or approval of said products by Two Brothers.

40. Three Brothers' acts have caused and, unless restrained by this Court, will continue to cause serious and irreparable injury to Two Brothers, for which Two Brothers has no adequate remedy at law.

COUNT III

(Common Law Trademark Infringement)

41. As the third ground for relief, Two Brothers hereby alleges common law trademark infringement. Two Brothers incorporates by reference Paragraphs 1 through 40 above, as though fully set forth herein.

42. Three Brothers' unauthorized use of the THREE BROTHERS mark constitutes common law trademark infringement because such use is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval by Two Brothers of Three Brothers' products. The public is, for example, likely to believe that Three Brothers' products originate

with Two Brothers, are licensed by Two Brothers, and/or are sponsored by, connected with, or related to Two Brothers.

43. Three Brothers' acts constitute unfair competition and trademark infringement in violation of the common law of the Commonwealth of Virginia.

44. Three Brothers' acts have caused and, unless restrained by this Court, will continue to cause serious and irreparable injury to Two Brothers, for which it has no adequate remedy at law.

COUNT IV

(Common Law Unfair Competition)

45. As its fourth ground for relief, Two Brothers hereby alleges common law unfair competition. Two Brothers incorporates by reference Paragraphs 1 through 44 above, as though fully set forth herein.

46. Three Brothers' unauthorized use of the THREE BROTHERS mark constitutes intended use of a false designation of origin and false or misleading representation, which wrongly and falsely designates, describes, and represents the origin of Three Brothers' products as originating from or being connected with the source of products sold under the TWO BROTHERS mark, and is likely to cause confusion, or to cause mistake, or to deceive as to Three Brothers' affiliation, connection, or association with Two Brothers, or as to the origin, sponsorship, or approval of Three Brothers' products by Two Brothers in violation of the common law of the Commonwealth of Virginia.

47. By reason of the foregoing acts, Three Brothers has willfully, intentionally, and unfairly competed with Two Brothers in violation of the common law of the Commonwealth of Virginia.

48. Three Brothers' acts have caused and, unless restrained by this Court, will continue to cause serious and irreparable injury to Two Brothers, for which Two Brothers has no adequate remedy at law.

COUNT V

(Violation of Virginia Consumer Protection Act, Va. Code § 59.1-200 et seq.)

49. As its fifth ground for relief, Two Brothers hereby alleges violation of the Virginia Consumer Protection Act. Two Brothers incorporates by reference Paragraphs 1 through 48 above, as though fully set forth herein.

50. Three Brothers' unauthorized use of the THREE BROTHERS mark is a deceptive act or practice, on which it intends consumers to rely, and is in the course of conduct involving trade or commerce.

51. Three Brothers' conduct involves trade practices that are directed to the market generally and that implicate consumer protection concerns.

52. Three Brothers is misrepresenting to consumers, and contributing to the ability of other suppliers to misrepresent, that the goods of Three Brothers are the goods of Two Brothers in violation of Va. Code § 59.1-200(A)(1).

53. Three Brothers is misrepresenting to consumers, and contributing to the ability of other suppliers to misrepresent, that the goods of Three Brothers are sponsored by, approved by, or certified by Two Brothers, or that Two Brothers is a source of such goods in violation of Va. Code § 59.1-200(A)(2).

54. Three Brothers is misrepresenting to consumers, and contributing to the ability of other suppliers to misrepresent, that its goods are affiliated, connected, or associated with Two Brothers in violation of Va. Code § 59.1-200(A)(3).

55. Three Brothers is misrepresenting to consumers, and contributing to the ability of other suppliers to misrepresent, that its goods have the characteristics and benefits of the goods of Two Brothers in violation of Va. Code § 59.1-200(A)(5).

56. Three Brothers is misrepresenting to consumers, and contributing to the ability of other suppliers to misrepresent, that its goods are similar to those of Two Brothers in terms of quality, grade, or style in violation of Va. Code Ann § 59.1- 200(A)(6).

57. Three Brothers' acts have caused and, unless restrained by this Court, will continue to cause serious and irreparable injury to Two Brothers, for which Two Brothers has no adequate remedy at law.

DEMAND FOR RELIEF

WHEREFORE, Two Brothers prays that this Court enter the following judgment and order:

A. That Three Brothers' use of the THREE BROTHERS mark violates sections 32 and 43(a) of the Lanham Act, the common law of the Commonwealth of Virginia, and the Virginia Consumer Protection Act.

B. That Three Brothers and their respective officers, agents, servants, employees, attorneys, and all those in active concert or participation with them, be preliminarily and permanently enjoined from:

1. Using the THREE BROTHERS mark in connection with beer, ale, lager, stout, porter or shandy or any other trademark which is likely to cause confusion, mistake, or deception with respect to Two Brothers' TWO BROTHERS mark;
2. Doing any other act or thing likely to induce the mistaken believe that Three Brothers' goods are in any way affiliated, connected, or associated with Two

Brothers' goods or doing any other act or thing likely to cause consumer confusion with respect to Two Brothers' TWO BROTHERS mark; and

3. Injuring Two Brothers' business reputation and goodwill associated with the TWO BROTHERS mark, and from otherwise unfairly competing with Two Brothers in any manner whatsoever.

C. That, pursuant to 15 U.S.C. §1118, Three Brothers be ordered to deliver up for destruction all materials, including but not limited to labels, packages, brochures, wrappers, advertisements, literature, promotions, displays, and all other matter in the custody or under the control of Three Brothers bearing the THREE BROTHERS mark.

D. That Three Brothers be ordered to recall from all sales people and authorized agents all materials, including but not limited to brochures, advertisements, promotions, and all other matter bearing the THREE BROTHERS mark.

E. That Three Brothers be required to expressly abandon U.S. Federal Trademark Application Ser. No. 86/021,014.

F. That Three Brothers be required to expressly abandon U.S. Federal Trademark Application Ser. No. 86/020,720.

G. That, pursuant to 15 U.S.C. §1116, Three Brothers be directed to file with the Court and serve upon Two Brothers within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which the Three Brothers has complied with the injunction.

H. That Two Brothers be awarded monetary relief in an amount to be fixed by the Court in its discretion as just, including:

1. All profits received by Three Brothers from sales and revenues of any kind in connection with any beer marketed under its THREE BROTHERS mark;
2. All damages sustained by Two Brothers as a result of Three Brothers' acts of infringement and unfair competition; and
3. All damages, compensatory and punitive, arising from Three Brothers' deliberate infringing actions as permitted under the law of the Commonwealth of Virginia.

I. That Three Brothers be ordered to compensate Two Brothers in an amount that would enable it to conduct corrective advertising reasonably calculated to remedy any consumer confusion created as a result of Three Brothers' unlawful actions.

J. That this Court award to Two Brothers all reasonable attorneys' fees, costs, and disbursements incurred by Two Brothers as a result of this action.

K. That the Court require Three Brothers to pay prejudgment interest on any and all monetary awards, (in whatever form), costs and expenses for this suit to which Two Brothers is entitled.

L. That the Court order all other and further relief that it deems proper and just.

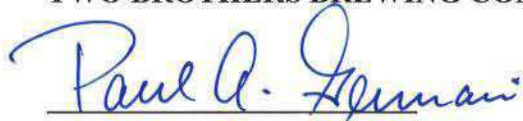
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Two Brothers demands trial by jury of all issues so triable.

Respectfully submitted,

TWO BROTHERS BREWING COMPANY

January 17, 2014



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* moving for *pro hac vice* admission

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TWO BROTHERS BREWING COMPANY,
Plaintiff/Counterclaim Defendant,

v.

Civil Action No.: 1:14CV48

THREE BROTHERS BREWING, LLC,
Defendant/Counterclaim Plaintiff.

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM
TO PLAINTIFF'S COMPLAINT**

Defendant, Three Brothers Brewing, LLC ("Three Brothers"), through its counsel, answers the Complaint of Two Brothers Brewing Company ("Two Brothers") as set forth below. Unless specifically admitted, Three Brothers denies each of the allegations of Two Brothers Complaint.

NATURE OF THE ACTION

1. The allegations contained in paragraph 1 of the Complaint assert the nature of the action and require no response of Three Brothers. To the extent they require a response, Three Brothers denies the allegations contained therein.

THE PARTIES

2. Three Brothers is without sufficient information or personal knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraph 2 of the Complaint and therefore denies the same, leaving the Plaintiff to its burden of proof.

3. Three Brothers admits that Three Brothers Brewing, LLC is a limited liability company organized and existing under the laws of the Commonwealth of

Virginia. Three Brothers further admits it transacts businesses in the Commonwealth of Virginia. Three Brothers denies all other allegations contained in paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. The allegations of paragraph 4 of the Complaint are legal assertions of the basis of subject matter jurisdiction, requiring no response of Three Brothers.

5. The allegations of the first two sentences of paragraph 5 of the Complaint are legal assertions of the basis of personal jurisdiction, requiring no response of Three Brothers. Three Brothers admits only that it transacts business within this district. Three Brothers denies the remaining allegations of the second, third and fourth sentences of paragraph 5 of the Complaint.

6. The allegations of paragraph 6 of the Complaint are legal assertions of the basis of venue, requiring no response of Three Brothers. To the extent an answer is required, Three Brothers denies the allegations of paragraph 6 of the Complaint.

FACTS

7. Three Brothers is without personal knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 7 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

8. Three Brothers is without personal knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 8 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

9. Three Brothers is without personal knowledge or information sufficient to

form a belief as to the truth or accuracy of the allegations of paragraph 9 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

10. Three Brothers is without personal knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 10 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

11. Three Brothers is without personal knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 11 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

12. Upon information and belief, Three Brothers admits the allegations of paragraph 12 of the Complaint.

13. It is unclear what is meant by “the trademark TWO BROTHERS”, or “the TWO BROTHERS mark” as set forth in paragraph 13 of the Complaint, as neither of those terms have yet to be defined in the text of the Complaint. Three Brothers is without personal knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 13 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

14. Upon information and belief, Three Brothers admits that Two Brothers entered one or more of its beer products at The Great American Beer Festival in Denver, Colorado, in 2013. Three Brothers is without sufficient information either to admit or deny the remaining allegations of paragraph 14 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

15. It is unclear what is meant by “The TWO BROTHERS mark”, or “TWO

BROTHERS mark” as set forth in paragraph 15 of the Complaint, as neither term has yet to be defined in the text of the Complaint. Moreover, the allegations of paragraph 15 of the Complaint which assert inherent distinctiveness state conclusions of law to which no response is required. Three Brothers has insufficient information to either admit or deny any factual allegations of paragraph 15 of the Complaint, and therefore denies the same, leaving the Plaintiff to its burden of proof.

16. It is unclear what is meant by “the TWO BROTHERS mark”, as set forth in paragraph 16 of the Complaint as that term has yet to be defined in the text of the Complaint. Three Brothers admits that Registration No. 2,319,407 for the stylized/design mark pictured was registered on February 15, 2000. Three Brothers further admits that Two Brothers filed applications number 86/123,386 and 86/123,339 on November 19, 2013, for the stylized/design mark and character mark set forth, respectively. Three Brothers denies the remaining allegations contained in paragraph 16 of the Complaint.

17. It is unclear what is meant by “the TWO BROTHERS mark”, as set forth in paragraph 17 of the Complaint, as that term has yet to be defined in the text of the Complaint. Three Brothers admits that the Certificate for Registration No. 2,319,407 is prima facie evidence of its validity, as well as Two Brothers’ ownership and exclusive right to use that stylized/design mark in connection with the identified goods in commerce. However, as set forth in Three Brothers’ counterclaim, Two Brothers’ Registration No. 2,319,407 is invalid by reason of abandonment. Three Brothers denies any remaining allegations in paragraph 17 of the Complaint.

18. The definition set out in Paragraph 18 of the Complaint contains no factual

allegations to which a response is required. However, Three Brothers objects to and denies any allegations or inferences that Two Brothers' Registration No. 2,319,407, its pending applications, and any limited common law rights, which Two Brothers must establish, are all valid and/or are the same mark or a continuation of the same mark. Moreover, Three Brothers denies that Two Brothers' pending federal trademark applications constitute valid grounds for asserting any claim of infringement against Three Brothers.

19. Three Brothers admits that it uses or has used 3 BROTHERS, JOIN THE BROTHERHOOD and THREE BROTHERS BREWING to brand its beer products. Three Brothers denies the remaining allegations contained in paragraph 19 of the Complaint.

20. Three Brothers admits it began distributing beer in December 2012. Three Brothers denies the remaining allegations contained in paragraph 20 of the Complaint.

21. Three Brothers admits the allegations contained in paragraph 21 of the Complaint.

22. Three Brothers admits the allegations contained in paragraph 22 of the Complaint.

23. Three Brothers admits the allegations contained in paragraph 23 of the Complaint.

24. Three Brothers admits that it sells beer in and around Harrisonburg and in parts of northern Virginia. Three Brothers also admits it can deliver beer to retailers within a day or two anywhere in Virginia. Three Brothers denies the remaining

allegations contained in paragraph 24 of the Complaint.

25. Three Brothers admits that it promotes its beer products through its website www.threebrosbeer.com. Three Brothers denies the remaining allegations of paragraph 25 of the Complaint.

26. Three Brothers admits that both Two Brothers and Three Brothers attended The Great American Beer Festival in Denver, Colorado in 2013. Three Brothers denies the remaining allegations of paragraph 26 of the Complaint.

27. Three Brothers admits only that it and Two Brothers sell beer. Three Brothers denies the remaining allegations contained in paragraph 27 of the Complaint.

28. Three Brothers admits that it sells beer to bars and other retailers. Three Brothers is without sufficient information or personal knowledge to form a belief as to the truth or accuracy of the remaining allegations contained in paragraph 28 of the Complaint and therefore denies the same, leaving the Plaintiff to its burden of proof.

29. Three Brothers admits only that it had knowledge of the existence of Two Brothers and of Registration No. 2,319,407 prior to filing Applications No. 86/021,014 and 86/020,720. Three Brothers expressly denies any direct or implied allegations that Three Brothers willfully infringed Two Brothers' trademark rights.

30. Three Brothers denies the allegations of paragraph 30 of the Complaint.

31. Three Brothers denies the allegations of paragraph 31 of the Complaint.

32. Three Brothers denies the allegations of paragraph 32 of the Complaint.

33. Three Brothers denies the allegations of paragraph 33 of the Complaint.

COUNT I

(Federal Trademark Infringement)

34. Three Brothers incorporates its responses to each and every allegation contained above with the same force and effect as fully set forth herein. Further, Three Brothers denies that it has infringed any trademark rights of Two Brothers in violation of federal statute.

35. Three Brothers denies the allegations of paragraph 35 of the Complaint.

36. Three Brothers denies the allegations of paragraph 36 of the Complaint.

37. Three Brothers denies the allegations of paragraph 37 of the Complaint.

COUNT II

(Federal Unfair Competition)

38. Three Brothers incorporates its responses to each and every allegation contained with the same force and effect as fully set forth herein. Further, Three Brothers denies that it has engaged in unfair competition in violation of federal law.

39. Three Brothers denies the allegations of paragraph 39 of the Complaint.

40. Three Brothers denies the allegations of paragraph 40 of the Complaint.

COUNT III

(Common Law Trademark Infringement)

41. Three Brothers incorporates its responses to each and every allegation contained in full force and effect as fully set forth herein. Further, Three Brothers denies that it has infringed common law trademark rights of Two Brothers.

42. Three Brothers denies the allegations of paragraph 42 of the Complaint.

43. Three Brothers denies the allegations of paragraph 43 of the Complaint.

44. Three Brothers denies the allegations of paragraph 44 of the Complaint.

COUNT IV

(Common Law Unfair Competition)

45. Three Brothers incorporates its responses to each and every allegation contained above with the same force and effect as fully set forth herein. Further, Three Brothers denies that it has engaged in unfair competition in violation of common law.

46. Three Brothers denies the allegations of paragraph 46 of the Complaint.

47. Three Brothers denies the allegations of paragraph 47 of the Complaint.

48. Three Brothers denies the allegations of paragraph 48 of the Complaint.

COUNT V

(Violation of Virginia Consumer Protection Act, Va. Code §59.1-200 et. seq.)

49. Three Brothers incorporates its responses to each and every allegation contained above in the same force and effect as if fully set forth herein. Further, Three Brothers denies that it has violated the Virginia Consumer Protection Act.

50. Three Brothers denies the allegations of paragraph 50 of the Complaint.

51. The allegations of paragraph 51 of the Complaint state conclusions of law requiring no response.

52. Three Brothers denies the allegations of paragraph 52 of the Complaint.

53. Three Brothers denies the allegations of paragraph 53 of the Complaint.

54. Three Brothers denies the allegations of paragraph 54 of the Complaint.

55. Three Brothers denies the allegations of paragraph 55 of the Complaint.

56. Three Brothers denies the allegations of paragraph 56 of the Complaint.

57. Three Brothers denies the allegations of paragraph 57 of the Complaint.

DEMAND FOR RELIEF

Three Brothers requests that the Court deny the relief sought by Two Brothers in paragraphs A-L of the section of the Complaint entitled "Demand for Relief".

AFFIRMATIVE AND GENERAL DEFENSES

Three Brothers does not assume the burden of proof with respect to the general defenses set forth below unless subsequent law provides otherwise. As separate and distinctive affirmative and general defenses to Two Brothers Complaint, Three Brothers alleges as follows:

1. Two Brothers' Complaint fails to state any claim upon which relief can be granted against Three Brothers.

2. Two Brothers' pending federal trademark application numbers 86/123,386 and 86/123,339 do not, as a matter of law, constitute a basis for Two Brothers' trademark infringement claims, unfair competition claims or consumer protection claims.

3. Two Brothers has suffered no damages as a result of any action or omission of Three Brothers.

4. There is no likelihood of confusion arising from the adoption or use by Three Brothers of the mark "3 Brothers" or any other branding used on Three Brothers' beer products with any branding adopted or used on Two Brothers' beer products.

5. Two Brothers' claims are barred by abandonment of any marks at issue,

including its federal trademark Registration No. 2,319,407.

6. Two Brothers is not entitled to injunctive relief.

COUNTERCLAIM

Defendant/Counterclaim Plaintiff, Three Brothers Brewing, LLC (“Three Brothers”), for its Counterclaim against Plaintiff/Counterclaim Defendant, Two Brothers Brewing Company (“Two Brothers”), states as follows:

The Parties

1. Three Brothers is a Virginia limited liability company with its principal place of business at 800 North Main Street, Harrisonburg, Virginia 22801.
2. Upon information and belief, Two Brothers is an Illinois corporation with its principal place of business at 30W315 Calumet Avenue, Warrenville, Illinois 60555.
3. On January 17, 2014, Two Brothers filed in the United State District Court for the Eastern District of Virginia a civil Complaint, *Two Brothers Brewing Company v. Three Brothers Brewing, LLC*, Civil Action No. 1:14CV48, in which it asserts, *inter alia*, causes of action for trademark infringement in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. Section 1114(1)(a); for federal common law unfair competition of violation of Section 43(a) of the Lanham Act 15 U.S.C. Section 1125(a) in common law; and for violation of Virginia Consumer Protection Act.
4. The counterclaims asserted by Three Brothers are for declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. §§2201, 2202.
5. This Court has jurisdiction over the subject matter of these claims pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1332, 1338(a), 2201, and 2202 in that Three

Brothers' counterclaims raise federal questions arising under the Lanham Act, 15 U.S.C. §§1125 and 1115, arising out of interstate commerce.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and because Two Brothers has consented to venue by filing its Complaint in this Court.

7. Personal jurisdiction exists over Two Brothers' in this Commonwealth and this judicial District under the Code of Virginia, Section 8.01-328.1.A 1 and 2, and the due process clause of the U.S. Constitution and because Two Brothers' has consented to such personal jurisdiction by filing its Complaint in this Court.

Facts

8. In its Complaint, Two Brothers raises and relies on federal trademark Registration No. 2,319,407 as a basis for its claims.

9. Three Brothers denies that it is or has infringed on Plaintiff's federal mark or any other common law mark. One of the grounds of such denial is the abandonment by Two Brothers of federal trademark Registration No. 2,319,407. Another grounds of Three Brothers' denial is that there is no likelihood of confusion between any valid mark of Two Brothers and Three Brothers to brand beer products.

10. Accordingly, a case in controversy exists about Two Brothers right to use and retain registration of federal trademark Registration No. 2,319,407 and the validity of such mark.

11. Federal trademark Registration No. 2,319,407 is invalid by reason of abandonment.

12. Federal trademark Registration No. 2,319,407 is the only federal trademark

registration which is owned by, or has been assigned to, Two Brothers having the literal element “Two Brothers” or “Two Brothers Brewing Company”.

13. Federal Registration No. 2,319,407 is a stylized/design mark.

14. No character mark application for the character mark “Two Brothers” was filed concurrently with Registration No. 2,319,407 or thereafter until the application for the mark “Two Brothers Brewing Company” was filed on November 19, 2013 (Application No. 86/123339).

15. Upon information and belief, Two Brothers ceased use of Registration No. 2,319,407, a stylized/design mark, on or before 2009, and began using a substantially different stylized/design mark which featured a depiction of two male heads leaning over a cup of beer, with each head and the cup of beer in a circular shape so that the overall stylized/design mark was similar to a clover shape, and which further included the signatures of Jason and Jim Ebel. (See Exhibit B to Two Brothers’ Complaint).

16. Upon information and belief, on or before 2010, Two Brothers then began using another substantially different stylized/design mark, the same or similar to the stylized/design mark which is the subject of Two Brothers’ Application No. 86/123,386, which uses a rectangular shaped logo containing the words “Two Brothers Brewing Company” in a circle containing a two-toned swirl. (See Paragraph 16 and Exhibit B to Two Brothers’ Complaint).

17. The two stylized/design marks used by Two Brothers since at least 2009, including the stylized/design mark set forth in Application No. 86/123,386, are substantially different in commercial impression than the Registration No. 2,319,407

stylized/design mark and are not a continuation of that mark.

18. It has been at least three years since Two Brothers has used the mark depicted in by Registration No. 2,319,407, which is *prima facie* evidence that Registration No. 2,319,407 is and has been abandoned.

19. Two Brothers federal trademark registration for Registration No. 2,319,407 is therefore abandoned.

PRAYER FOR RELIEF

WHEREFORE, Three Brothers pray that this Court grant the following relief:

A. That Two Brothers' Complaint be dismissed with prejudice and judgment granted in Three Brothers' favor;

B. That judgment be issued declaring that federal trademark Registration No. 2,319,407 is invalid and canceled;

C. That judgment be issued declaring that Three Brothers use of the marks 3 BROTHERS and/or JOIN THE BROTHERHOOD is lawful and does not infringe on any rights of Two Brothers.

D. That the Court award Three Brothers its costs in connection with this litigation; and

E. That the Court award Three Brothers such other and further relief as the Court deems just and proper.

TRIAL BY JURY IS DEMANDED

Respectfully submitted,

THREE BROTHERS BREWING COMPANY,
LLC

Dated: March 17, 2014

/s/Daniel L. Fitch/

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2014, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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and

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